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IN THE

Supreme Court of the United States

October Term, 1957

No. 736

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (formerly Local Union 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled case on October 28, 1957. Such judgment affirmed a decree of the National Labor Relations Board directing petitioner to cease and desist from certain picketing which was alleged to be in violation of Section 8(b) (4) (A) of the National Labor Realtions Act, as amended.

OPINION BELOW

The Opinion of the Court of Appeals is not yet reported and is attached hereto as Appendix "A". See also R. 44.

JURISDICTION

The judgment of the Court of Appeals was entered on October 28, 1957. R. 50.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

QUESTION PRESENTED

Whether, in view of the special protection afforded the right to picket under Section 13 of the Act as well as under the Federal Constitution, otherwise lawful picketing of a primary employer at a site of primary employment but which site is shared by neutral employers, can be declared illegal under Section 8(b) (4) (A) as being carried on for a "secondary" object of involving such neutrals merely on the basis of Board inference of a general illegal object derived solely (a) from the incidental effects of such picketing on neutrals at the common situs and the availability of another situs for picketing where no neutrals are present, (b) from attempts by the Union to solicit the voluntary support of such neutrals, and (c) from the failure of the Union affirmatively to inform the neutrals' employees that the picketing was not directed against them; that is, can picketing at a common but primary situs of employment be declared illegal under Section 8(b) (4) (A) in the absence of clear and convincing evidence that it was an *actual* object of such picketing to involve the neutrals there located?

STATUTES INVOLVED

The pertinent provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C. § 151, *et seq.*), are §§ 7, 8(b) (4) (A) and 13:

> "Sec. 7. Employees shall have the right to self-organizations, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage

in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3)."

"Sec. 8 . . . (b). It shall be an unfair labor practice for a labor orgainzation or its agents—. . . .

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . ."

"Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

STATEMENT

A. The Facts

The facts upon which the Board based its conclusions in both its original and Supplemental Decision are confined entirely to a short stipulation (R. 11a) agreed to by the parties in the original proceedings before the Board. These facts are as follows:

In June of 1954 the Union became involved in a labor dispute with the Campbell Coal Company hereinafter sometimes referred to as "Campbell" or the

"Employer") of Atlanta, Georgia. That company operates two ready-mix concrete plants in the Atlanta area. Following the discriminatory discharge of nine of its members by Campbell, the Union engaged in a strike commencing June 9, 1954. In connection with its ready-mix operations Campbell employs truck drivers who deliver the ready-mix to various construction sites in that area. These truck drivers enter and leave the two ready-mix plants several times in the course of each working day, although they spend only approximately 25% of their time at these plants. Approximately 25% of the truck drivers' time is spent going to and from the plants and the construction sites. The balance of the working time of these truck drivers is spent at the construction sites. There Campbell's truck drivers, at the direction of the contractors on the job sites, operates the unloading mechanisms of the trucks so as to place and pour the ready-mix concrete as directed by the contractors. The ready-mix concrete becomes a part of the structures being built at the construction projects.

The Union picketed at both of the plants and also at seven construction sites where the ready-mix concrete was being delivered and poured. The picketing at the construction sites was peacefully conducted by pickets who carried signs which read:

"Employees of Campbell Coal Company on strikes in protest of discharges against Union employees. Sales Drivers Helpers & Building Construction Drivers, Local 859, AFL."

The pickets conducted their picketing only when the Campbell trucks were engaged in pouring concrete and picketed as closely as possible to the trucks. No oral or other inducement was made to any other employees at the construction site to refrain from working.

At each construction site the Union agent advised the contractor of the dispute with Campbell and asked him not to accept delivery of the concrete. If delivery was refused, the Union took no further action, but if accepted the Union agents picketed the immediate area of the trucks with the signs as described above. While the Union made no attempt to induce the employees of the neutrals to refrain from working other than by display of the picket signs, neither did it take any affirmative steps to inform the employees of such neutrals that the picketing was not aimed at their employer.

B. The Proceedings Below

The Board considered the case twice and issued an original Decision (R. 1a) and a Supplemental Decision (R. 28a) in both of which it found that the picketing was proscribed by Section 8(b) (4) (A) of the Act. In its first decision the Board did not rely on the facts set forth in the paragraph immediately above, but inferred an illegal object of involving the neutrals merely from the fact that the picketing could have been effectively carried on at Campbell's own premises where there were no neutral employers engaged in work. (110 NLRB No. 274.) On Petition to Review to the court below, that court reversed on the ground that the Board was not warranted in inferring an illegal object from the mere fact of ability to picket other than at the common situs,[1] and remanded the case to

[1] As stated by that court (229 F. 2d at 517 (R. 25a):

"To read [a rigid rule of no common situs picketing where another situs is available] into the statute by implication would unduly invade the application of Section 13 which preserves the right to strike 'except as specifically provided' in other provisions of the Act. It is not specifically provided that picketing at a common site, with an incidental effect upon employees of a neutral employer, is unlawful in every case where picketing could also be conducted against the primary employer at another of its places of business."

the Board so that, if it desired, the Board could consider all portions of the evidence (229 F. 2d 514, cert. denied 351 U.S. 972) (R. 18a).

Following such remand, the Board issued a Supplemental Decision in which, relying on the additional evidence it had previously considered inconsequential, namely, that the union had requested the neutrals employers' voluntary support and had failed affirmatively to inform the neutrals' employees that the picketing was not aimed at their employer, concluded that it was an object of the picketing to induce the employees of the contractors or subcontractors at the construction site to cease employment for the purpose of forcing those contractors to cease using Campbell's ready-mix concrete (116 NLRB 1020) (R. 28a).

C. The Decision of the Court Below

Following appeal of the Board's Supplemental Decision to the court below, that court, in a split 2-1 decision, affirmed the Board. Although it found that the union was "within its right in appealing directly to neutral employers not to accept delivery from the primary employer", and that it was under no legal duty to inform the neutral's employees that the picketing was not aimed at their employer, nevertheless the majority held that these were factors from which the Board could draw an inference of an illegal object, protections accorded primary picketing in Section 13 of the Act notwithstanding. The Court stated:

> "[T]he Board's interpretation of the Act and the Board's application of it in doubtful situations are entitled to weight." . . .
> "We recognize the doubt, but we must give weight to the resolution of it by the Board."
> (R. 47.)

Judge Bazelon, dissenting, held the inference of illegality of the picketing to be without support, being

derived solely from otherwise lawful conduct Since the picketing was otherwise primary and lawful, it was his opinion that the Board had seriously "impaired" the Act's basic policy of not interfering with the right to strike or picket. (R. 49).

REASONS FOR GRANTING THE WRIT

1. The question presented is of major importance in the administration of the National Labor Relations Act, in particular with respect to the application of Section 8(b) (4) (A) of that Act to the common situs picketing situation, and in respect to the manner in which that section can be used to avoid the special protections which Congress has accorded the right to picket under Section 13. If the Board is to be permitted to interpret and apply the proscriptions against alleged secondary picketing in the manner in which it has done in the present case, and if it is to be permitted to utilize bare inference or speculation derived from lawful union activities to outlaw otherwise lawful picketing at a primary place of employment, then there can be no lawful picketing at a primary place of employment where neutral employers happen to be engaged in work along with the picketed primary employer, for in such a situation there are invariably a number of factors present, such as here, from which the Board could easily infer an unlawful object. Nowhere in the Act is any distinction made between picketing of a primary employer carried on at its own place of business or such picketing carried on at a common situs of employment where the employer, as here, is engaged in his ordinary operations for the major portion of the working day; and examination of the Act's legislative history reveals no Congressional purpose to make any such distinctions. Both the legislative history of the Act and its express language indicate no intent to obstruct the traditional

and constitutionally-protected right of a union to picket a primary employer pursuant to a legitimate primary labor dispute, and this regardless of the place where the picketing is carried on and regardless of such factors as the adequacy or effectiveness of the picketing or its incidental effect on others. Indeed, and on the contrary, by Section 13 of the Act "Congress has made it clear that § 8(b) (4), and all other parts of the Act which otherwise might be read so as to interfere with, impede or diminish the union's traditional right to strike, may be so read only if such interference, impediment or diminution is 'specially provided for' in the Act." (*N.L.R.B. v. International Rice Milling Co.*, 341 U.S. 665.)[2]

It is to be noted that the employees of the primary employer herein (Campbell Coal) were not only engaged in their customary work at the construction sites for the major portion of their working day, but were also integrally involved in the construction operations, so that their primary place of employment, as well as the primary situs of their labor dispute, was at the construction site rather than at the place where they drove their trucks to pick up the ready-mix concrete. Thus, the picketing here was carried on at the primary place of employment and against the primary employer.

Because of the particular protection given the right to picket in a primary dispute under Section 13 of the Act, and in view of the preferred status of that right

[2] Although the reference in the decision is to "the ordinary strike", the Supreme Court obviously equated ordinary picketing with the ordinary strike, because, in *Rice Milling* none of the employees of the employer against whom the picketing was directed engaged in the strike or in the picketing and, indeed, none were members of or sympathetic to the Union. The "strike" actually was picketing for recognition and consisted solely of picketing by members of the Union who were not employees of the struck employer.

under the Federal Constitution[3] it would appear that the Board has no warrant to rely on mere inference or supposition to conclude that otherwise legitimate picketing is illegal but, rather, must be obliged to arrive at a conclusion of unlawful object only on the basis of concrete proof or clear and convincing evidence. Here, the Board has resorted to coupling two separate activities of the Union, each of them legal in itself, to produce an alleged illegal purpose. Since the picketing of a primary employer at a common site of employment is proper under the Act even though that employer might have been picketed elsewhere, and since direct appeal for the cooperation of neutral employers is permitted under the Act,[4] it is difficult to see how the combination of two legitimate activities can support a finding of unlawful object. In another context this Court has similarly condemned "the practice of imputing a sinister meaning to the exercise of a person's constitutional rights." *(Slochower v. Board of Ed. of N.Y.*, 100 L. Ed. (Adv.) 449, 454.) To paraphrase the language in that case, the constitutional right to engage in peaceful picketing and the Congressionally-protected right to solicit the aid of neutral employers "would be reduced to a hollow mockery if [their] exercise could be taken as equivalent . . . to a confession of" an unlawful purpose.

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[3] *Thomas v. Collins*, 323 U.S. 516, at 529; *Burstyn v. Wilson*, 343 U.S. 495, at 503; *Murdock v. Pennsylvania*, 319 U.S. at 115; *American Communications Asso. v. Douds*, 339 U.S. 382, at 401.

[4] The fact, relied on by the Board and the majority of the court below, that the picketing at the construction site was carried on only when the neutral employers refused the union's requested support proves nothing and can afford no basis for an adverse inference for the reason that, obviously, the picketing of Campbell at the construction site could be carried on only if Campbell appeared at the construction site to deliver concrete which had been accepted; in those instances where the contractor voluntarily refused to deal with Campbell, there would be no occasion for the Campbell trucks to appear at the construction site, and hence there would be no occasion or opportunity to picket.

From the above discussion, it is respectfully submitted that this case involves important questions concerning the degree and quality of proof required under Section 8(b) (4) to destroy the protections accorded primary picketing under Section 13 of the Act and under the Federal Constitution. In an effort to impose restrictions on primary picketing, carried on at a common situs of employment, which restrictions are neither contained in the Act not intended by Congress, the Board, in this and other cases, has substituted conjecture and supposition for the concrete proof of an actual illegal object, which, it is submitted, is necessary to overcome the picketing protections of Section 13.

2. The holding of the court below that the Board can be permitted to infer from otherwise lawful conduct a general "object" on the part of the Union to induce work stoppages of neutral employees as proscribed under Section 8(b) (4) (A), rather than the necessity of relying on clear and convincing evidence that it was an *actual* "object" of the union to involve neutrals in the primary dispute, is in conflict with the holding of the Fifth Circuit in the *Otis-Massey* case *(National Labor Relations Board v. Teamsters Local* 968 (C.A. 5), 225 F. 2d 205, cert. denied 350 U.S. 914; and of the Second Circuit in *Douds v. Internationl Longshoremen's Ass'n.,* 224 F. 2d 455, cert. den. 76 S. Ct. 117). In those cases, which like the present one involved a question of the application of Section 8(b) (4) (A) to so-called common situs picketing, both Circuits stressed the necessity for finding upon some substantial evidence other than inference that "the unlawful objective denounced by the statute *actually* existed." (225 F. 2d at 209.) Indeed, in the *Douds* case in the Second Circuit, Judge Learned Hand, speaking for the Court, was explicit in reminding that the probable or even inevitable consequence of involv-

ing a neutral because of certain otherwise legitimate activities might not be enough to warrant an inference of an unlawful object: "When Congress limited the wrong to occasions when the cessation was an 'object' of the conduct, it excluded much indeed that the ordinary law of tort would have included. If it had not done so, it would have made nearly all strikes unlawful. The 'object' of an action is the concluding state of things that the actor seeks to bring about; that which satisfies his aim." (224 F. 2d at 459.) Also compare *Sales Drivers, Helpers & Building Construction Drivers Local Union 859, etc. v. N.L.R.B.*, 229 F. 2d 514, 97 U.S. App. D.C. 173, cert. denied, 351 U.S. 972, with *N.L.R.B. v. United Steel Workers* (C.A. 1), No. 5237, December 5, 1957, 41 LRRM 2181. These cases are in direct conflict respecting the essential issue in this case.

3. The holding of the court below in sustaining the Board's conclusions of illegality on the undisputed record in this case is erroneous. This follows not only from what has been set forth above, but from the fact that "The burden 'was upon the Board to prove its charges by competent and credible evidence and not upon the Respondent to disprove them'." (Quoted in *N.L.R.B. v. Reynolds & Manley Lumber Co.*, 212 F. 2d 155, 158 (C.A. 5, 1954.) In addition, it is to be remembered that "When the Board could as reasonably infer a proper motive as an unlawful one, substantial evidence has not proved the respondent to be guilty of an unfair labor practice." *(Houston Chronicle Publishing Co.*, 211 F. 2d 848 (C.A. 5).)

It is respectfully submitted that, in view of the special protections accorded the right to picket under Section 13 of the Act and the Federation Constitution, it cannot be said in this case that the Board's conclusions that the picketing was for an object proscribed by Section 8(b)(4)(A) of the Act, is supported by sub-

stantial evidence on the record considered as a whole *(c.f. Universal Camera Corp. v. N.L.R.B.,* 304 U.S. 374), but rather is based solely on speculation, conjecture or other inference insufficient to justify proscription of otherwise proper primary picketing.

The foregoing considerations, coupled with the paramount consideration that the right of picketing, both under the First Amendment and specifically under Section 13 of the Act, has acquired a special degree of protection, would seem to require a modification of the Board's current practice of inferring an unlawful objective in otherwise proper primary picketing solely on the basis of the incident of a common situs and of the carrying on of legitimate activities, such as soliciting a neutral's voluntary support. If the Board is permitted to indulge in such inferences, then the way is easy for abrogation of all common situs picketing, no matter how primary or otherswise legitimate such picketing may be.

CONCLUSION

It is respectfully submitted that, for the reasons asserted above, this Petition for a Writ of Certiorari should be granted.

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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13651

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (formerly Local Union 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and on Petition for Enforcement of an Order of the National Labor Relations Board

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Decided October 28, 1957

Mr. Herbert S. Thatcher for petitioner.

Mr. Norton J. Come, Attorney, National Labor Relations Board, with whom *Messrs. Stephen Leonard,* Associate General Counsel, National Labor Relations Board, and *Marcel Mallet-Prevost,* Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent.

Before PRETTYMAN, BAZELON and FAHY, *Circuit Judges.*

FAHY, *Circuit Judge:* This is a sequel to *Sales Drivers* v. *NLRB,* 97 U.S. App. D.C. 173, 229 F.2d 514.

There we set aside an order of the Board resulting from its decision that the Union had violated section 8(b)(4)(A) of the Taft-Hartley Act.[1] This is the so-called secondary boycott provision.[2] We remanded the case to the Board for its further consideration, if desired. The Board gave further consideration and issued a Supplemental Decision and Order.[3] The Union now petitions us to set aside this order and the Board requests that we enforce it.

Both decisions were reached by the Board on the basis of facts set forth in the same stipulation. But in its previous decision the Board disregarded some of those facts; that is, it held that the picketing constituted a secondary boycott upon consideration of only part of the facts, namely, (1) that the picketing occurred at sites shared by the struck employer, the Campbell Coal Company, and neutral employers, to which sites the pickets followed trucks of the primary employer from its plants to construction jobs of neutral employers where deliveries were made to the latter, with whom the Union had no dispute, and (2) although the picketing at these construction projects did not go beyond the standards of conduct which preserved the validity of the picketing in *Moore Dry Dock,* 92 N.L.R.B. 547, there was available to the Union in the present case, though not in *Moore Dry Dock,* the opportunity to picket plants of the primary employer which were not common to sites of secondary employ-

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[1] 49 Stat. 452 (1935), as amended 29 U.S.C. § 158(b)(4)(A) (1952).

[2] While § 8(b)(4) does not expressly mention "primary" or "secondary" disputes, strikes, or boycotts, it is often referred to in the Act's legislative history as one of the Act's "secondary boycott sections." The other is § 303, 61 Stat. 158 (1947), 29 U.S.C. § 187 (1952). See *NLRB* v. *Denver Bldg. Council,* 341 U.S. 675, 686; *NLRB* v. *International Rice Milling Co.,* 341 U.S. 663, 673 n. 8. An interesting review of the subject is found in 45 Georgetown L.J. 614 (1957).

[3] 116 N.L.R.B. 1020.

ers. Due to this added fact the Board held the conduct invalid, relying upon *Washington Coca-Cola,* 107 N.L.R.B. 299. We set aside the Board's order, however, on the ground that this single factor added to those present in *Moore Dry Dock* was insufficient to make out a violation of section 8(b)(4)(A) which otherwise did not exist.[4]

On the remand the Board has relied upon circumstances included in the stipulation of facts which it did not rely upon in its first decision. These are: At each construction site of a neutral employer the Union's agent advised such employer or his representative of the dispute with the primary employer and asked the neutral employer not to accept delivery from the primary employer. If delivery were refused the Union took no further action but if accepted the Union agents picketed the trucks of the primary employer while they were at the site which was common to that of the secondary or neutral employer. In some instances employees of the neutral employer refused to work during the picketing, assigning as their reason the presence of the picket signs, and the Union's agents made no effort to inform these employees that the picketing was not intended as an appeal to them not to work.

The Union contends that its picketing was limited to employees of the primary employer and was not intended to induce concerted refusal to work by employees of neutral employers. In its supplemental decision the Board, pointing to the facts above set forth, answers that the Union,

> Unable to cause a cessation of business between certain neutral contractors and the primary employer by direct appeals to the former . . . sought

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[4] "No rigid rule which would make these few factors conclusive is contained in or deducible from the statute." 97 U.S. App. D.C. at 176, 229 F.2d at 517.

> to accomplish that objective through a picket line appeal to employees of the secondary employers. Only those employers who refused to accede to the Respondent's [Union's] demands that they cease doing business with Campbell Coal were picketed.

The Board continues:

> When employees of these employers ceased working as a direct result of the picketing the picket line had accomplished the Respondent's previously revealed objective of putting pressure on neutral employers to force them to cease doing business with the primary employer. No attempt was made by the Respondent to inform striking employees that the picket line was aimed at Campbell Coal and not at the employees of neutral contractors.[5]

"[T]he Board's interpretation of the Act and the Board's application of it in doubtful situations are entitled to weight." *NLRB* v. *Denver Bldg. Council, supra* at 692.

We recognize the doubt, but we must give weight to the resolution of it by the Board. So doing we should refrain on the facts of this case from repudiating the judgment of the Board that an object of the picketing, though not necessarily the sole object, see *NLRB* v. *Denver Bldg. Council, supra* at 689, was within the proscription of section 8(b)(4)(A). Though the Union was within its rights in appealing directly to neutral employers not to accept deliveries from the primary employer, when picketing followed noncompliance with the Union's appeal the combination of circumstances could be considered by the Board in determining that an object of the picketing came within the object condemned by the secondary boycott section of the statute. The same can be said of the failure of the Union to inform striking employees of neutral employers that the picket line was not aimed at those employ-

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[5] 116 N.L.R.B. at 1022.

ers; that, too, was a factor the Board could consider, as it did.

The Union contends that the Board's decision is in derogation of section 13 which provides that nothing in the statute, "except as specifically provided therein, shall be construed to interfere with or impede in any way the right to strike."[6] But section 8(b)(4)(A) is a specific provision and if it is violated section 13 is of no help. Cf. *NLRB* v. *International Rice Milling Co., supra* at 673. While the right to strike must be upheld unless the evidence fairly brings a case within some limitation upon that right, we cannot say that the evidence did not warrant the Board in finding that the conduct as a whole was within the limitation contained in section 8(b) (4) (A).

We have considered also the Union's reliance upon the well established principle that peaceful picketing is an exercise of freedom of expression, guaranteed by the First Amendment. *Carlson* v. *California,* 310 U.S. 106; *Thornhill* v. *Alabama,* 310 U.S. 88. The Union urges that this principle must be vindicated unless the situation clearly warrants the contrary. But the Supreme Court has held that section 8(b)(4)(A) is not an abridgement of the First Amendment. *International Brotherhood of Electrical Workers* v. *NLRB,* 341 U.S. 694, 705; cf. *Carpenters Union* v. *Ritter's Cafe,* 315 U.S. 722. And, as we have already indicated, the facts do not warrant us in repudiating the Board's finding that that section was violate.

Affirmed.

BAZELON, *Circuit Judge,* dissenting: The Union agent requested the neutral employer not to accept de-

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[6] 49 Stat. 457 (1935), 29 U.S.C. § 163 (1952).

liveries from the primary employer. Nothing transpired which could be construed as a threat or pressure. Upon refusal of the request, the Union picketed the site of the neutral employer as it had done in similar cases of refusal. It is clear that the Union was within its rights in making its request of the neutral employer. And ordinarily picketing of the site shared with a neutral employer is not forbidden. Nevertheless, the Board ruled that, in these circumstances, cessation of work by the employees of the neutral employer gave rise to an inference that picketing was directed against the neutral employer, as pressure for compliance with the Union's request, rather than against the primary employer. And because the Union took no affirmative action to inform employees of the neutral employer that the picket line was aimed soley at the primary employer,[1] the Board held this inference conclusive.

I do not think there is adequate support for the inference of illegality. The Board makes an unsupported inference and then imposes on the Union a duty to negate it by affirmative action. The employees of the neutral employer are free to support the Union out of feelings of solidarity. The law does not forbid the Union to receive such support. The Board's requirement of affirmative action is calculated to deprive the Union of that support. This, of course, seriously impairs the Act's basic policy not "to interfere with or impede in any way the right to strike." 49 STAT. 457 (1935), 29 U.S.C. § 163 (1952).

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[1] I read the court's opinion as requiring affirmative action by the Union only where there has been a request by the Union to the neutral employer not to accept deliveries from the primary employer and the neutral employer has refused.